

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESSE MOLINA, as Personal Representative of
FRANKIE SIERRA, deceased, and on behalf of
the Estate of FRANKIE SIERRA, and REBECCA
MOLINA as Mother and Next Friend of RAMON
SIERRA, a minor,

Plaintiffs,

-vs-

No. CIV 98-1108 LH/JHG

THE TOWN OF SILVER CITY, NEW
MEXICO, THE SILVER CITY POLICE
DEPARTMENT, officer PAUL WESSON, in his
official and individual capacity, officer PAUL
MONTES, in his official and individual capacity,
officer SAM RODRIGUEZ, in his official and
individual capacity, Emergency Response Worker
PAUL LUCERO in his individual and official
capacity, Emergency Response Worker DAVID
MANCHA, in his individual and official capacity,
Emergency Worker DAVID PAUL, in his
individual and official capacity, Emergency
Response Worker DAN OTERO, in his individual
and official capacity, Emergency Response
Worker FRED SELDERS in his individual and
official capacity, Firefighter RAY MUNIZ, in his
individual and official capacity, Firefighter ELOY
MEDINA, in his individual and official capacity
and Firefighter PETE SANCHEZ, in his individual
and official capacity,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiffs' Opposed Motion to File Sur Reply
Brief in Response to Defendants' Reply to Plaintiffs' Response to Defendants' Motion For

Summary Judgment (Docket No. 72), served September 5, 2000. The Court, having considered the Motion, the memoranda of the parties, the record, and the applicable law, and otherwise being fully advised, finds that Plaintiffs' Opposed Motion to File Sur Reply Brief is moot and will be **denied as moot**.

Plaintiffs move for leave to file a surreply to respond to the Motion to Strike brought by the Town of Silver City, the Silver City Police Department, Officer Paul Wesson, Officer Paul Montes, Officer Sam Rodriguez, Ray Muniz, and Eloy Medina (Silver City Defendants). The Silver City Defendants incorporated their Motion to strike nine exhibits Plaintiffs submitted in support of Plaintiffs' Response to Town of Silver City Defendant's [sic] Motion for Summary Judgment in their Reply to Plaintiffs' Response to Town of Silver City Defendants' Motion For Summary Judgement. The Silver City Defendants maintain that the exhibits are inadmissible pursuant to Fed. R. Civ. P. 56(e).

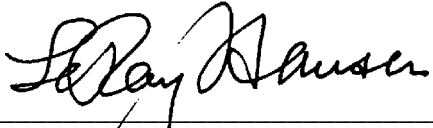
The Court first finds that the parties have argued the Motion to Strike in their briefs addressing the Motion to File Sur Reply Brief. Therefore, Plaintiffs' Opposed Motion to File Sur Reply Brief in Response to Defendants' Reply to Plaintiffs' Response to Defendants' Motion For Summary Judgment will be denied as moot.

As to the Motion to Strike, the Court agrees with Plaintiffs that the Silver City Defendants did not comply with the requirements set forth in the Local Civil Rules of the United States District Court for the District of New Mexico. Pursuant to these rules, "a motion must be in writing and state with particularity the grounds and relief sought," D.N.M.LR-Civ. 7.1; movant "must determine whether a motion is opposed," *id.* at 7.3; and upon completion of briefing, movant "files with the Clerk, as a package, the original and one copy of all papers related to the motion, *id.* 7.3(4). Thus, the Motion is not properly before this Court and the Court will disregard it.

Even if the Silver City Defendants had followed the proper procedure in submitting their Motion to Strike, however, the Court would deny the Motion. Defendants contend that Plaintiffs' exhibits are inadmissible because they are not been authenticated by and attached to an affidavit that meets the requirements of Fed. R. Civ. P. 56(e). (Silver City Defs.' Resp. Pls.' Opposed Mot. File Sur Reply Br. at 4.) The fact that the Silver City Defendants themselves provided to Plaintiffs the very exhibits they now contest sufficiently authenticates these exhibits for the purposes of Fed. R. Civ. P. 56. *See Anderson v. Cramlet*, 789 F.2d 840, 845 (10th Cir. 1986)(exhibits not supported by sworn affidavits but obtained in request for production of documents admissible under Rule 56(c)).

IT IS HEREBY ORDERED that Plaintiffs' Opposed Motion to File Sur Reply Brief in Response to Defendants' Reply to Plaintiffs' Response to Defendants' Motion For Summary Judgment (Docket No. 72), served September 5, 2000, is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Silver City Defendants' Motion to Strike will not be considered by the Court.


UNITED STATES DISTRICT JUDGE